



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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Report No. SCL-00233S

Thursday December 27, 2018

Streamlined Submarine Cable Landing License Applications Accepted For Filing

Unless otherwise specified, the following procedures apply to the applications listed below:

The applications listed below have been found, upon initial review, to be acceptable for filing and subject to the streamlined processing procedures set forth in section 1.767 of the Commission's rules, 47 C.F.R. § 1.767. Pursuant to the Submarine Cable Landing License Act, 47 U.S.C. §§ 34-39, and Executive Order No. 10530, reprinted as amended in 3 U.S.C. § 301, each applicant seeks: (a) the grant of a cable landing licensee; (b) the modification of a cable landing license; and/or (c) the assignment or transfer of control of an interest in a submarine cable landing license.

Pursuant to its decision in Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, FCC 01-332, 16 FCC Rcd 22167 (2001), and section 1.767 of the rules, the Commission will take action upon these applications within forty-five (45) days after release of this public notice, unless upon further examination an application is deemed ineligible for streamlined processing.

Ex parte communications between outside parties and Commission staff concerning these applications are permitted subject to the Commission's rules for "permit-but-disclose proceedings." See 47 C.F.R. § 1.1206. Filings relating to this application must be received within 14 days of this notice. Such filings will not necessarily result in an application being deemed ineligible for streamlined processing.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 1-888-835-5322 (tty). All applications listed are subject to further consideration and review, and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations, and other requirements.

Transfer of Control

Current Licensee: Hawaiki Submarine Cable USA LLC

FROM: HCL Limited Partnership

TO: Palisade Subsea Investments Pty Ltd

Application filed for consent to transfer de facto control of Hawaiki Submarine Cable USA LLC (HSC USA) from HCL Limited Partnership (HCL LP) to Palisade Subsea Investments Pty Ltd. (Palisade) (collectively, Applicants). HSC USA along with Tillamook Lightwave IGA (Tillamook Lightwave), ACS Cable Systems, LLC (ACS), DRFortress, LLC (DRFortress), and the American Samoa Telecommunications Authority (ASTCA) are the licensees for the Hawaiki Cable System (Hawaiki). SCL-LIC-20160906-00019. The Hawaiki system is a non-common carrier cable connecting Sydney, Australia; Mangawhai Heads, New Zealand; Tafuna, American Samoa; Kapolei, Oahu; Hawaii and Pacific City; Oregon. The Hawaiki system was placed into service on July 20, 2018. Tillamook Lightwave, ACS, DRFortress, and ASTCA are not part of this transaction, and this transaction does not affect their interests in the Hawaiki system.

HSC USA, a Delaware limited liability company, is a direct wholly-owned subsidiary of Hawaiki Submarine Cable LP (HSC LP), a limited partnership organized under the laws of New Zealand. HSC LP is in turn a direct, wholly-owned subsidiary of HCL LP, a New Zealand entity. HCL LP is a bandwidth supplier in the Pacific submarine cable market with 100% ownership of the capacity and facilities of the main trunk of Hawaiki system, excluding the spur to American Samoa which is owned by ASTCA. HSC USA owns and operates the Hawaiki system's cable landing station located in Oahu, Hawaii.

Palisade, is an affiliate of Palisade Investment Partners Limited (Palisade Partners), an Australia specialist infrastructure investment manager. Palisade Partners focuses on investments in Australian infrastructure, including submarine cable systems.

Palisade and HCL LP have entered into binding agreements to become equity partners, with funds managed by Palisade Partners acquiring an equity ownership interest in HCL LP. Pursuant to the agreements, Palisade has acquired a combination of redeemable preference and ordinary equity interests in HCL LP that equate to 30% of the voting rights in HCL LP. Palisade holds 10% of the ordinary shares and 100% of the preferred shares in HCL LP. As a result, the ownership interests of the other owners of HCL LP decreased: HCL Founders LP, a New Zealand entity, (from 39.82% to 27.88%); Sinclair Hawaiki LP, a New Zealand entity (from 15.60% to 10.92%); MD Fibre Trustee Ltd, a New Zealand entity (from 39.19% to 27.43%); and Alta Cable Holdings Ltd, a New Zealand entity (from 5.39% to 3.77%).

Applicants state that Palisade will be able to exercise minority rights that may constitute de facto control over HSC USA, subject to Commission approval. The minority rights in HCL LP are derived from the limited partner and shareholder interests that Palisades holds in HCL LP and its general partner, HCL LP General Partner Limited (HCL GP). As a 30% holder of the limited partner shares of HCL LP, Palisade will have a negative control (veto power) over approval of certain matters that require approval of the limited partners by special resolution (a resolution passed by partners holding 85% of the total number of partnership interest). Palisade will also have voting and other rights, including the right to appoint three directors, as a 30% shareholder of HCL GP. Palisade will hold negative control over specified matters requiring approval by "Extraordinary Board Resolution," which are resolutions that pass by directors representing at least 85% of the total number of partnership interest.

After the investment in HCL LP by Palisade, the following entities hold a ten percent or greater ownership interest in HCL LP: (1) Palisade (30%). (2) HCL Founders LP (27.88%). The Galasso Family Trust (Garland View Ltd, Trustee) has a 27.88% indirect ownership through its 100% ownership in HCL Founders Trust, a New Zealand entity. (3) Sinclair Hawaiki LP (10.92%). SIL Hawaiki Ltd, Sinclair Investments LP, GCA Legal Trustee Ltd, GCA Trustee Holdings Ltd, and the Edgar Family Trusts, all New Zealand entities, each hold an indirect 15.6% interest in HSC USA through Sinclair Hawaiki LP. (4) MD Fibre Trust (27.43%). No other person or entity has a 10 percent or greater direct or indirect interest in HCL LP or HSC USA.

The Commission conditioned grant of the cable landing license for the Hawaiki system on Hawaiki Submarine Cable USA LLC abiding by the commitments and undertakings contained in the December 15, 2017 letter from Christophe Terral, Manager, Hawaiki Submarine Cable USA LLC to Assistant Secretary for Policy, DHS, the Department of Defense Chief Information Officer, and the General Counsel, Defense Information Systems Agency (2017 LOA). Applicants certify they will continue to abide by the commitments made in the 2017 LOA. A copy of the 2017 LOA is publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-20160906-00019 and accessing "Other Filings Related to This Application" from the Document Viewing area.

Applicants agree to continue to accept and abide by the routine conditions in section 1.767(g) of the Commission rules, 47 C.F.R. § 1.767(g).

REMINDERS:

Applicants must certify that neither the applicant nor any party to the application is subject to a denial of federal benefits by federal and/or state courts under authority granted in 21 U.S.C. § 862. See C.F.R. §§ 1.2001-1.2003.

By this notice, we inform the public that submarine cable landing license applications that are part of larger transactions involving multiple Commission licenses or authorizations may involve "extraordinary circumstances" as referenced in Review of Commission Consideration of Applications under the Cable Landing License Act, Report and Order, 16 FCC Rcd 22167 (2001) and Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997), paras. 327-28, Order on Reconsideration, 15 FCC Rcd 18158 (2000). Additionally, extraordinary circumstances result where Executive Branch agencies petition the Commission to defer action on an application pending the resolution of potential national security, law enforcement, foreign policy and trade policy issues. Accordingly, these applications may be removed from streamlined processing and may not be acted on within the 90-day review period that the Commission has established as the period of time normally required to reach a decision on non-streamlined cable landing licenses. This notice shall serve as public notice to applicants that, in these circumstances, additional time may be required for Commission review and final action. No additional formal public notice will be provided routinely with respect to specific applications in the event that the applicable review period extends beyond 90 days.